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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,330	10/31/2003	Todd L. Phillips	15911/09063	9673
27530	7590	11/21/2005	EXAMINER	
NELSON MULLINS RILEY & SCARBOROUGH, LLP 1320 MAIN STREET, 17TH FLOOR COLUMBIA, SC 29201			CARIASO, ALAN B	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/698,330

Applicant(s)

PHILLIPS, TODD L.

Examiner

Alan Cariaso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 7 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7 and 10-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. Receipt of applicant's response filed October 27, 2005 is acknowledged. Claims 7 and 10-21 are pending.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7, 12, 15 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by LIEBERMAN (US 2,167,458).
4. LIEBERMAN discloses a light assembly comprising: a stand (9) having a light bulb socket (12) receiving a light bulb (13) with an attachment base (col.2, lines 25-27); a translucent cover (4, col.1, lines 36-37) formed by an elongated sleeve (4, figs.1 & 3) having a length defined between a top portion (3-3, fig.1) and a bottom portion (4xx), said sleeve (4) having a longitudinal bore (cross-section shown in fig.3) therethrough dimensioned to receive said stand (9); and wherein said length has sufficient dimension to extend said top portion (3-3) of said sleeve (4) above said attachment base (within socket 12) of said light bulb (13) attached to said socket (12); wherein said sleeve (4) is formed from glass (col.1, line 36); wherein said sleeve (4) has an exterior surface with surface ornamentation (4x in fig.2, col.1, lines 38-41); wherein said sleeve (4) defines a

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shoulder ("top wall" in col.1, lines 43-45) extending radially inward in said top portion of said sleeve (4) to define a top hole (in place of 5x in fig.1, as described in col.1, lines 43-45), said top hole having a smaller dimension (fig.1) than said longitudinal bore (fig.3). In regards to the translucent candle cover, it is viewed as a translucent cover for a candle or light source appearing as a candle, where the standard or cover (4) of LIEBERMAN is capable of being used to cover a provided electric light source (13) that is considered to simulate candle light. Any recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. The prior art structure is capable of performing the intended use, which therefore meets the claim.

5. Claims 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by KUHN et al (US 1,725,199).

6. KUHN discloses an elongated sleeve (large cylindrical portion 7 of bottle in fig.1) formed of transparent glass (pg.2, lines 59-63, 94-95); said sleeve (7) having a length defined between a top portion (12), a bottom portion, and longitudinal bore between them, said sleeve (7) having a shoulder (adjacent neck 6) extending radially inward in said top portion (12) to define a top hole (12); an interior surface of said sleeve (7) being coated with a colored material (pg.1, lines 45-50, pg.2, lines 42-50); wherein an interior surface of said longitudinal bore is coated with fired paint (pg.2, lines 53-93).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7, 10, 11, 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over TROTTER (US 1,486,815) in view of WOOD (US 1,977,105).

9. TROTTER discloses a light assembly comprising: a stand (12, 25, fig.1) having a light bulb socket (14, fig.3) receiving a light bulb (15) with an attachment base (seen through cut-out 42 in figs.1 or 2); a candle cover (tubular member 50) formed by an elongated sleeve (50) having a length defined between a top portion (4-4, fig.1) and a bottom portion (adjacent 27), said sleeve (50) having a longitudinal bore (fig.1) therethrough dimensioned to receive said stand (12, 25); and wherein said length has sufficient dimension to extend said top portion (4-4) of said sleeve (50) above said attachment base (top of socket 14) of said light bulb (15) attached to said socket (14); wherein said sleeve (50) defines a shoulder (tapering top portion of 50) extending radially inward in said top portion of said sleeve to define a top hole having a smaller dimension (fig.1) than said longitudinal bore; wherein said top hole is dimensioned to receive a portion of the light bulb (15).

10. However TROTTER does not disclose: the cover being translucent; said length dimensioned to extend said top portion of said sleeve between approximately  $\frac{1}{8}$  to  $\frac{1}{4}$  or  $\frac{1}{4}$  inch above said attachment base of said light bulb.

11. WOOD teaches a housing (10) with lamp (12) and socket (13), the housing being made of porcelain or insulating resin that is translucent for the purpose of diffusing light or colored light (pg.2, lines 88-96), and apparently hiding (fig.2) the inner parts of the lamp device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the porcelain tubular member (50, pg.2, lines 19-21) of the lamp device of TROTTER being translucent as taught by WOOD in order to diffuse colored light giving a soft general illumination that is visually soothing, while visually hiding the inner parts of the lamp device for greater aesthetic effect and visual simulation of a candle glow of the support cover just below the light source.

12. As for the length extension about the attachment base, WOOD shows the housing top portion extending some distance above the attachment base for the purpose of modifying at least central and lower portions of the light coming from the lamp bulb. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the light assembly of TROTTER to include the top portion of the translucent candle cover or sleeve extending an optimal fraction of an inch since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. (In re Aller, 220 F.2d 454,456, 105 USPQ 233,235). One would have been motivated to set the extent of the top portion of the sleeve above the attachment base to be about 1/8-1/4 inch proportional to the size of the bulb and housing, so as to cover at least the lower portion of the lamp envelope where light is diffused and colored for an aesthetic effect.

13. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over TROTTER (US 1,486,815) in view of WOOD (US 1,977,105) as applied to claim 7 above, and further in view of HARRIGAN (US 3,767,910).

14. TROTTER modified by WOOD above discloses the claimed invention except: said sleeve being formed from glass having an interior surface being coated with a colored material to provide a translucent layer formed by paint which has been fired.

15. HARRIGAN teaches a translucent sleeve (13-figs.1-3; col.2, lines 29-31) formed from glass (col.2, line 31) having an interior surface coated with a colored material being a lacquer (col.2, lines 35-38) for the purpose of producing mute and colored light emitted from the light source. It would have been obvious to one having ordinary skill in the art to modify the sleeve of the lamp device of TROTTER to include the type of colored translucent sleeve that includes an inner coating as taught by HARRIGAN in order to mute and color light for aesthetic effect.

16. As for the translucent layer being formed by paint which has been fired, in general, the method of forming a part of the device is not germane to the issue of patentability of the device itself. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir.

1985). Therefore, the firing of the paint limitation has not been given patentable weight.

17. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over TROTTER (US 1,486,815) in view of WOOD (US 1,977,105) as applied to claim 7 above, and further in view of CHARLES (US 1,893,730).

18. TROTTER modified by WOOD above discloses the claimed invention except: said sleeve having an exterior surface with surface ornamentation formed to simulate candle wax dripping.

19. CHARLES discloses a lamp with a surface (top right of body member 1) simulating candle wax dripping for the purpose of simulating a lighted candle that would appear to be burning, melting wax and degrading in form. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lamp device of ZABEL to include the type of surface ornamentation of CHARLES in order to more simulate the appearance of a lighted candle.

20. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over ZABEL (US 2,278,816) in view of GRAFF (US 4,395,653).

21. ZABEL discloses an elongated sleeve (10) formed of transparent glass (pg.1, col. 1, lines 23-25); said sleeve (10) having a length (fig.1) defined between a top portion (neck 12, collar 20) and a bottom portion (covered by base 31), said sleeve (10) having a longitudinal bore extending from said bottom portion to said top portion, said sleeve



(10) having a shoulder (13, fig.1) extending radially inward in said top portion (12,20) to define a top hole (10' in fig.2); a surface of said sleeve (10) being coated with a colored material (pg.2, col.1, lines 13-21). However, ZABEL does not disclose an interior surface of said longitudinal bore being coated with the colored material and with fired paint.

22. GRAFF teaches fired enamel or colored enamels or coatings applied to an incandescent lamp for diffusing the view of the filament and transmit light transmission of a color different from the light source of the lamp (col.1, lines 6-15), as in color-producing oxide or fired coating on the inner bulb wall (col.3, line 55 to col.4, line 4).

23. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lamp device of ZABEL to include the type of fired enamel or coating on the inner side of the bulb as taught by GRAFF in order to diffuse or disappear the view of the filament and transmit a desired colored light from the filament or light source producing a pleasant aesthetic (col.2, lines 3-15).

24. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over ZABEL (US 2,278,816) in view of GRAFF (US 4,395,653) as applied to claims 17 and 18 above, and further in view of CHARLES (US 1,893,730).

25. ZABEL modified by GRAFF above discloses the claimed invention including some surface ornamentation (13). However ZABEL does not disclose surface ornamentation formed to simulate candle wax dripping. CHARLES discloses a lamp with a surface (top right of body member 1) simulating candle wax dripping for the

purpose of simulating a lighted candle that would appear to be burning, melting wax and degrading in form. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lamp device of ZABEL to include the type of surface ornamentation of CHARLES in order to more simulate the appearance of a lighted candle.

### ***Response to Arguments***

26. Applicant's arguments with respect to claims 7 and 10-19 have been considered but are moot in view of the new ground(s) of rejection.

27. In regards to new claims 20 and 21, associated with original claims 1, 8 and 9, this subject matter has been reconsidered. Newly cited reference to Lieberman (2,167,458) is found to meet the claim as set forth in this action. Also, the reference to Trotter (1,486,815) is found to substantially meet these claims. Trotter shows a tapering of the top portion of tubular cover member (50), the tapering inherently has a radial component directed inward so as to form a hole smaller in diameter than the diameter of the longitudinal bore of the body of the tubular member (50). Trotter further shows the top hole dimensioned to receive a portion of the light bulb (15).

### ***Conclusion***

28. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. JENSEN et al (US 6,808,297) shows an electric candle lamp device that includes a translucent candlestick (14 in fig.2, col.2, lines 10-15) with a top

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portion extending inwardly (58) forming a hole positioned above the light source (94) which can be a bulb (col.2, lines 39-44) supported by a vertical guide structure (66), the light for light source (64) travels downward (87,89,54) making a glow including the translucent candlestick simulating a real candle (col.3, lines 9-21). BOSCHETTO (US 5,152,602) shows an electric candle that has a translucent candle cover (1-fig.2, col.1, lines 64-65) with a top portion extending above the attachment base or socket (4) of the light bulb (3). GILLINDER (US 1,652,779) shows a glass sleeve having pigment sprayed onto the interior surface (pg.1, lines 69-74, 98-102) and fluted surface ornamentation fire heated (pg.1, lines 75-83). ROSENFELD (US 2,594,074) shows a top portion (13') of a sleeve about a light bulb with support, the top portion being made of translucent material (col.4, lines 42-50) allowing light rays from the base of the bulb to transmit.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alan Cariaso whose telephone number is (571) 272-2366. The examiner can normally be reached on 9-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alan Cariaso  
Primary Examiner  
Art Unit 2875

November 16, 2005

AC